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ABSTRACT

This issue of the quarterly newsletter of the Institute for Research on Educational Finance and Governance contains five articles summarizing five papers on the regulation of education that were originally presented at the institute's Law and Education Seminar. Each summary was written by the author of the original paper. David Kirp's article treats the changing nature of federal regulation and the proper relationship between federal and state governments in educational policy matters. Guy Benveniste discusses the effects of imposing regulatory controls at different stages in the implementation of programs. Charles Benson draws on the recent history of vocational education to illustrate the rise of federal regulation and the frustrations regulation has caused. Current arguments concerning deregulation are reviewed by William Clune. Ann Swidler's summary considers the role of regulation in an individualistic society with a deep historical antipathy to centralization of authority. A supplement to the newsletter summarizes a doctoral dissertation by Mary Bankston on the subject of the organizational reporting demanded of school districts by the accountability requirements of state and federal programs. (PGD)

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INSTITUTE FOR RESEARCH IN EDUCATIONAL FINANCE AND GOVERNANCE

CONTROLS AND CONSEQUENCES
Balancing Regulation and Education

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S. Kirkpatrick

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Government regulation is old news. Attempts by higher levels of American government to influence the behavior of lower levels, whether through sanction or inducement — the working definition of regulation in education — form an indispensible part of a federalist system of government. Particularly since the 1960s, new, or newly perceived, mischiefs were held to demand innovations in the form of government control.

Regulatory history in education has been less dramatic than in other fields. Although the federal government has supported education since the Northwest Ordinance of 1784 made federally-held lands available for local schools, that aid was supposed to come without strings. This level of federal involvement in schooling was confirmed in a 1931 report of the Advisory Commission on Education which declared that law should "not delegate to the Federal Government any control of the social purpose or specific processes of education." The federal educational effort during the New Deal was work and welfare-oriented, the nominal spinoffs of relief activities, and did not compete with the mission of the schools over the long run.

The education initiatives of the 1960s were accompanied by a far more activist and obvious federal presence, though it was still a modest effort when compared to the area of occupational safety. The degree of discretion currently available to local school officials varies with the particulars of the program, but generally, educators have far more room to maneuver than their counterparts in private industry. There is a greater tendency to rely on school systems to generate their own processes of decision, rather than imposing a single approach. Punishments for violation of federal educational rules are less severe in character and less frequently meted out.

But there are parallels to be drawn between social regulation generally and regulation in education. In education as elsewhere, new burdens have been placed on states and localities with little heed either to financial implications or cost-effectiveness. Standards concerning the handicapped and the limited-English-speaking are frequently singled out as offenders in this regard. The tendency to inflexibility is evident in Washington's habit of imposing national standards, rather than allowing states to adopt more nuanced approaches to a particular issue. Although education regulations more typically mandate procedures than outcomes, the possibility of unreasonable costs, measured both in out-of-pocket expenditures and lost time, has gone un-

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noticed or is ignored. Most important, this system of regulation is said to have generated a climate of mutual distrust, contributing to the demoralization of America's public schools.

In the past, federal and state agencies often worked in tandem on matters of shared interest, the federal government respecting state and local priorities and political concerns. But this has changed with the pressure for more effective regulation. Statutes effectively have handed the states their marching orders and the government has imposed a variety of sanctions for recalcitrants. These include:

- Direct legal orders.
- Fund cutoffs in one program for noncompliance with the demands of another. The Highway Beautification Act denied highway construction money to states that failed to remove billboards, for instance.
- Requirements spanning a range of federal programs, such as those concerning nondiscrimination.
- Federal preemption of responsiblities long assumed by the states, such as policing the workplace.

This approach to regulation has dramatically altered the pattern of relationships between levels of government. It challenges the federal idea of coexistent state and national authority and pushes it toward a more federalized vision of centralized national control.

Government regulation seems an inevitable and essential element of a structurally complex society. Yet if regulation in some form seems here to stay, the particulars of regulation have caused no end of consternation. A decade or so ago, the widespread concern was to make regulation more effective by broadening its reach and deepening its impress. If the new generation of critics are right, that campaign succeeded all too well, for it is the excesses of regulation that now arouse most concern.

Many worry about the impact of regulation on political choices. The growth of regulation removes issues from democratic control, turning them over to bureaucrats only remotely and indirectly subject to outside check. Other critics say that the new rules are just too expensive and inflexible; why, for instance, should the federal government dictate the particulars of bilingual education? Critics claim that regulations are too intrusive because they specify not only what goals localities must reach but also how they must behave, and that they are inconsistently interpreted. Ultimately critics fault regulation for being ineffective. Some alternate strategy — variously, less regulation or a very different strategy of regulation — is deemed in order.

These criticisms provoke demands for deregulation of education, but such an approach may misfire. To the extent that regulation represents a response to the increasing complexity of managing education in this country, deregulation will not help. Reducing the number and specificity of rules will not keep organized interests from pressing their views on government nor will it simplify decisionmaking. Fewer and more general regulations will increase ambiguity and heighten tensions. Far from disappearing, the problem of complexity, to which rules are intended to speak, will emerge elsewhere, as school officials struggle to adjust to a newly uncertain world.

Furthermore, the critique ignores a critical distinction between rules advanced in the service of redistributive programs, aimed at getting federal dollars to have-nots, and rules accompanying grants designed to encourage school system development, as with aid to the gifted, vocational education, or impact aid. In terms of regulatory detail, differences between these types of programs are modest, but objections to rules have concentrated on the redistributive programs. This suggests that it may be the program, not the rule, that is really at issue, or that objections to regulations in redistributive programs are, in effect, a strategy to question whether the have-nots should be a federal priority. Thus, some imposition may well be necessary if the federal government is to interest itself in the plight of the educationally least well off.

However, the case for elaborate federal policing, even on behalf of the have-nots, may no longer be so compelling because of the ways both Washington and lower level officials now manage relationships. For its part, the federal government is more inclined to use the standards of law as a lever to negotiate, and is less likely to impose its will on lower reaches of government. Over time, state and local administrators have increasingly linked the federal initiatives with their own priorities. Thus, there now appears to be far less tension between school officials and Washington bureaucrats than the demand for deregulation presupposes. Deregulation is, in this respect, a 1980s solution to a 1970s dilemma.

Policy toward regulation concerns itself with the "right" balance or mix between order and spontaneity, between rationality and impulsiveness. The point is not that regulation in education poses no cause for concern, but rather that concern is properly focused on the form that regulation assumes. A federal government that is less rule-minded, more subtle, supple and flexible in its dealings with state and local officials could concern itself more with aiding them as they adapt federal goals to local exigencies. This approach differs from much of what has gone before. If it prevails, regulation would have less to do with rule-enforcement, more with strengthening the capacity of others to educate effectively.

Rule-enforcement has its place, particularly in safeguarding the stake of have-nots. But even here, it may be that these claimants now have sufficient clout within school organizations — largely as a result of recent regulatory history — to make continuing federal enforcement less vital. What is called for is the elaboration of a shift in the federal role that, informally, has already begun. ■

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Devising Strategies for Change

American education is a complex mosaic where legislatures, courts, local political organizations, and state and federal agencies work closely with teacher unions, parents' organizations, students and the general public. Each is partially controlled or affected by the other groups. Often the mandate of one body requires either coordination or interference with the activities of another.

Regulation ensures that the direction and purpose of a mandate will be achieved. It also attempts to facilitate implementation. Courts make decisions, laws are enacted, federal agencies set rules for implementation, and school districts accept money and other inducements to initiate novel activities. But many of these attempts to facilitate implementation fail or are distorted due to an inappropriate method of control applied at the wrong point in the implementation process.

A case in point is PL 94-142, the Education for All Handicapped Children Act of 1975, implemented in 1978. This legislation has several distinct objectives reflecting the major problems in educating handicapped students.

1. The first objective is to insure that every child needing special education has access to an appropriate education. Districts are to identify children who require special education and provide supplementary aids and services, such as speech pathology, audiology, therapy, counseling and transportation. In those instances when a district does not have facilities for a given disability, it must reimburse parents for private services.

2. A second objective of the legislation is to ensure that children are not assigned to special education classes in an arbitrary or discriminatory fashion. The statute specifies assessment procedures and requires the development of an Individualized Education Program (IEP) for each child.

3. A third objective of the legislation is to reduce, as much as possible, the extent to which children are segregated in special education classes. It introduces the notion of mainstreaming, or of placing handicapped children in the least restrictive educational environment. The statute further provides that children's programs in special education are to be evaluated periodically and that each child in special education able to benefit from the experience attend conventional classes.

Regulation for Implementation

Often the drafters of legislation are unable to discern the most appropriate means of ensuring optimum program implementation, and will devise a number of regulatory controls and mechanisms to ensure that the goals of the program are met. In general, individuals and organizations respond better to positive inducements than to negative sanctions, which can generate defensive strategies, become very expensive, be time consuming, and actually make change more difficult to achieve. The implementation of PL 94-142 combines a number of such controls and proceses.

Input controls. Since all organizations — educational and otherwise — require input resources such as money to survive,

Many attempts to facilitate implementation fail or are distorted due to inappropriate methods of control applied at the wrong point in the implementation process.

control of inputs is probably the most effective way of changing organizational behavior. Input controls usually stress the importance of the budgetary process in government, but the training and socialization of professionals entering an organization is another important input. Input controls allow considerable discretion to implementers. In essence, the regulatory organization says: "Here are some resources; go ahead and do the job."

Federal funds were provided to local school districts for the implementation of PL 94-142. The control placed on this input was that the district must follow the implementation process outlined in the legislation.

Process controls. Process activities are those that are concerned with the manner in which a service or product is provided. They often include rules to follow in specific instances or standard operating procedures. Process controls shape organizational activity by changing routines. For example, health and safety standards in the workplace are typical process controls.

Process controls are used extensively in regulatory practice, and tend to reduce day-to-day discretion. These controls say: "Do this job in the following manner; do not deviate from this procedure." Process controls are often used when an outside agency is attempting to advance goals which, while important to society, are less important to the overall objectives and activities of the implementer. The goals of affirmative action, or environmental protection objectives are good examples.

The process controls for PL 94-142 include an Individualized Education Program (IEP) which calls for the inclusion of parents, administrators, program specialists, and on occasion, attorneys, in planning the most appropriate educational program for a particular student. It must be signed by those involved in its construction, most specifically parents, and is required to include basic assessment information, long range goals, specific services needed, the rationale for placement and the criteria used for evaluation, among other things.

Due process safeguards are also provided for the parents and children. These include complete notice of all actions taken and procedures used, in the parents' native language. Appeal and hearing procedures are also specified.

Output/outcome controls. Output/outcome controls seek to change organizational consequences, altering the product or service performed. Outputs are usually defined as the immediate consequences of an organization. For example, the output of an institution of higher education may be a cohort of graduates with diplomas. Outcomes are the secondary effects of organizational outputs; if the output is a cohort of graduating seniors, the outcome may be the percentage who find significant employment within a given period of time.

Implicit herein is the notion of disclosure. Output controls necessarily require the implementer to say something about what has been done: The relevant imagery here is: "Tell us what you have done so that we can decide whether to ask you to continue or to do something else." Notably, output controls are often linked to inputs; positive output information is used to generate continued or increased input resources. Output controls tend to be used in planning situations where a large number of loosely connected organizations must coordinate their efforts.

When output controls are linked to inputs, a system of rewards or punishments is activated and brings about implementation. If people do not implement, it may be because they are ignorant of expectations or incapable of performing as wanted. However, implementation failure usually means that for some reason there is

advantage in not implementing. These failures can often be attributed to the system of reward and punishment.

PL 94-142 did not specify any output/outcome controls or regulatory mechanisms.

Inherent Assumptions

Underlying PL 94-142 are a number of assumptions that impede implementation. The first underlying assumption is that parents have the motivation, capability, and resources to act as agents of change. Not only are parents expected to participate in the planning process, but by virtue of that involvement they are viewed as monitors to the implementation of the program. In fact, some parents are unable or unwilling to play the role intended for them. Considerable time and effort goes into simply searching for parents in order to execute the IEP. Without a sincere effort and participation by all parties, the IEP meeting can become little more than a signature gathering exercise.

Another assumption is that districts and parents can easily reach agreements on necessary services for handicapped children. In fact, since the law requires that unavailable services be provided by having districts reimburse parents for private services, the opportunity for conflicts regarding district capabilities or child needs has been underestimated. Where parents are organized and have access to specialized legal aid, they tend not to come to the schools to seek help. Rather, they confront the district in an adversarial role in order to have greater influence in the placement of their child. The district, as a result, adopts defensive strategies that distort the IEP process; most of the IEP meeting is spent purely on matters having to do with elaborating the necessary forms rather than determining the child's needs.

Finally, the law assumes that the goal of mainstreaming handicapped students is fully accepted by education professionals. However, transfers in and out of special education programs imply additional complications for school administrators, and mainstreamed children often require extra attention from the classroom teacher. Such burdens suggest that more lip service is being paid to the goals of mainstreaming than sincere effort.

The point is that there is a difference between the IEP and what actually happens to the child. Classroom instruction of students takes place on a daily basis, away from the parents, administrators and specialists that devise the IEP. Implementation at the instructional level, therefore, depends on the behavior of teachers and other educational specialists, and not on a detailed IEP. No procedural controls will alter this fact.

Conclusion

The strategy for implementing PL 94-142 relies on process controls and it is important to ask whether procedures like the IEP are effective in achieving program goals. Our examples show that certain goals are amenable to output controls when these exist; the goal of protecting children from arbitrary labelling is amenable to routine output controls. But the goal of mainstreaming or of ensuring an adequate education is not amenable to either output or process rules. They depend on input controls, namely on the good will and intentions of the professionals that provide the service. This requires greater attention to the needs, rewards, career goals, and status of professional staffs. PL 94-142 does not go far enough in that respect. ■

Changing Goals Spawn New Rules

The regulation of education has increased over time. The history of vocational education, the oldest educational program receiving federal categorical aid, illustrates the rise of regulation, the frustrations brought about by its complexities and the consequent demands for deregulation.

Worker education in one form or another is an ancient process, but its incorporation into the secondary school curriculum was an American innovation of the early 20th century. Vocational education is a system of occupational training conducted mainly in public high schools, community colleges, and regional occupational centers. The training prepares students for jobs that require less than the baccalaureate degree, primarily in agriculture, industry, retailing, health occupations, office skills, and consumer and homemaking proficiency. Vocational education was the first form of schooling to receive categorical aid from the federal government.

By World War I, nine states had established study commissions on vocational education and five had established state systems of vocational education, each of these serving as a kind of model for the federal Vocational Education Act (Smith-Hughes) in 1917. Prompted by war-induced labor shortages and reformers intent upon protecting the place of practical training in American schools, the Smith-Hughes Act assured that specified federal and state money for vocational education could not be siphoned off for other programs.

To receive Smith-Hughes funds, a state was required to create a board, accountable to the Federal Board for Vocational Education, to review and approve the state's vocational education master plan. The law also controlled how secondary students allocated their time in school; if a student was taught one class by a teacher paid from federal vocational funds, that student had to spend 50 percent of his or her course time in shopwork, 25 percent in closely related subjects, and 25 percent in academics.

Given the unity of the vocational educational leadership — a homogenous community suffused with the Protestant work ethic and fiercely patriotic toward mainline national institutions and traditions — there was no special concern about monitoring vocational education programs for compliance with Congressional intent. There existed general agreement on goals and there were no insurmountable difficulties in achieving the desired results, so that the activity was virtually self-monitoring. In this harmonious setting the essential nature of vocational education legislation remained constant from 1917 until 1963.

Enter Social Objectives

In 1963, Congress passed The Vocational Education Act, expressing a different set of goals: to use the system of vocational education to provide disadvantaged persons with skills that would qualify them for good jobs. It extended greater federal control over the distribution of funds, designating portions, or set-asides, of feder-

al money for specific purposes. For example, out of its federal allotment, each state had to spend at least 25 percent on training for people who had completed or left high school, on construction of area vocational school facilities, or both. Another five percent set-aside was designated ". . . to meet the special vocational education needs of youths . . . in economically depressed communities, who have academic, socioeconomic, or other handicaps that prevent them from succeeding in regular vocational education programs."

Though stating its concern for the poor and handicapped in a perfunctory manner, the 1963 Act represented a major shift in policy. In addition to its history of concern with promoting practical training in high schools, the leadership of the vocational education community was required by the law to prepare members of discriminated groups for good jobs. At the same time, Congress doubted the capacity, if not the willingness, of educators to enforce the new law. It proceeded to add layer upon layer of controls in successive acts, building powerfully on these tentative statements of social objectives.

Legislative Control in Full Stride

The 1963 Vocational Education Act was short — only five pages in length. The 1968 Vocational Education Amendments made it much longer — 31 pages — and the Amendments are full of centralizing devices. The 1968 legislation sought to obtain categorical control of vocational education funds by dispersing those funds only to local agencies that proved to be economically efficient in the delivery of services. It also expanded the use of set-asides, and explicitly authorized annual appropriations for eight programs, including research, cooperative programs, and bilingual vocational education.

Furthermore, the 1968 Amendments made important changes in planning processes. They moved toward centralization of federal control of vocational education while at the same time opening training activities to the influence of special interest groups. The states were required to offer programs taking into account area manpower needs, and to avoid duplication of programs offered by other organizations and institutions. Finally, the 1968 Amendments established a National Advisory Council of Vocational Education comprised of 21 members, supported by state advisory councils charged with evaluating programs and preparing long-range and annual program plans.

The Educational Amendments of 1976 expanded the original Act even more, and placed an extremely strong emphasis on a completely new subject: sex equity. It also emphasized the use of federal funds as "seed money" for program innovation, and required extensive planning and evaluation ("accountability") reports from the state. These Amendments had the effect of encouraging local innovation while also tightening control through several layers of government.

The 1976 Amendments called for comprehensive manpower planning by the states. If the legislative language had been taken seriously, the states would be as thoroughly involved in manpower planning as the government of the Soviet Union. The Amendments also required the states to evaluate the effectiveness of each vocational program assisted with federal funds at least once every five years and to use the findings to revise the state's programs. Furthermore, the Amendments provided for the establishment of a national vocational education data system (VEDS) to provide detailed information on enrollment, staff, facilities, expenditures, and student retention. Finally, the number of representatives on the state advisory council was increased and each local authority that received federal vocational money was to appoint yet another council — a local advisory committee. No other educational activity in the country is subject to such precise scrutiny as this.

Since 1976, vocational education legislation has been further expanded by a set of Rules and Regulations, issued in 1977, and the *Vocational Education Guidelines for Eliminating Discrimination and Denials of Services on the Basis of Race, Color, National Origin, Sex and Handicap (OCR Guidelines)* in 1979. While the 1977 Rules reiterate legislative language, the *OCR Guidelines* make explicit reference to the distribution of state and local funds and nondiscriminatory access to training and jobs. For example, state and local recipients were required to locate vocational education facilities at sites that were readily accessible to both minority and nonminority communities. Thus, the emphasis of vocational education legislation has shifted from preserving the place of technical education in the high school to assuring that minority groups have access to that education.

The complexity of legislation concerning vocational education has increased over the past 65 years, extending federal control over the planning processes and distribution of funds. This in turn has created a web of centralized power in the administration of vocational education. It is objections to this kind of centralizaton in education and other areas of public policy that have spawned the deregulation movement. ■

The Ruckus Over Regulation

The deregulation philosophy, beginning as a criticism of government regulation of business, is now urged as a way to improve a wide variety of public policies. Deregulating the federal role in education refers to a strategy for improving educational outcomes while reducing regulatory costs and the number and intensity of legal obligations on educational organizations. The common form of governmental control of education, intervention by rules and sanctions, is said to be incompatible with the adaptive, flexible, social interaction of teaching and learning.

Criticisms of deregulation are not sharply defined nor well organized. Deregulation is currently discussed in political debate and the popular media, but distinct critiques are often confounded with each other, making clear thinking difficult. It is much easier to accept the desirability of "getting government off the backs of the people" in the abstract than to accept the repeal or relaxation of a particular provision for a specified reason. On the other hand, there is something important to learn from almost every deregulation critique. Rethinking the premises and mechanisms of legal intervention is important.

While many deregulatory adjustments may be possible and desirable, the idea of costless wholesale deregulation is almost exclusively associated with criticisms of the goals rather than the means of federal intervention. In that sense, deregulation is a myth. It does not give us the same results with less regulation, but is a fundamental change in policy.

Criticisms of the Goals of Federal Intervention

Objections to the goals of federal intervention in education are especially powerful. They generally assert, regardless of how well legal means are designed

and administered, that there are no net benefits from such intervention. Such criticisms of the goals of federal government in education are of four types.

Federal goals are not worthwhile. A strong theme in the deregulation critique is that the goals of federal intervention are not worthwhile. The egalitarian concerns of the federal government are seen as so preoccupied with relative advantage and disadvantage that the absolute values of education are ignored.

Federal programs are not effective. Proponents of deregulation believe that government cannot legislate learning, cause change in local education practices with grants or laws from Washington, or do anything about class achievement patterns. In fact, federal programs have been responsible for an enormous amount of change in educational programs and administration. In almost every target area significant reallocations of resources or highly identifiable programs are visible. However, one of the problems with federal programs is that the standards for success are unclear. What this means is that both the standards of program effectiveness and our knowledge about what constitutes an effective program need to be reviewed.

Federal programs are unnecessary. A common deregulatory criticism is that federal programs are unnecessary — that state and local governments would meet the need if the federal government did not, often at lower cost. Most federal programs are not popular in a great many states, usually because they demand a redistribution of resources toward previously underserved groups. If a state decides *not* to offer a program, federal sponsorhip is obviously necessary to meet federal goals. Few would assert that change would happen as quickly in the absence of federal intervention.

Federal goals are not properly federal. Many argue that education is a matter of state and local concern — that although federal goals are worthwhile, can be effective, and are supplementary to state and local action, the principles of federalism require that they should not be pursued.

The arguments for a federal role are surprisingly tenacious, criticisms notwithstanding. Although education is not a federal purpose, the connection between it and other federal purposes, such as improving economic productivity and assimilating new immigrants, is clear. Thus a federal role in education can easily be supported as necessary for the achievement of national public goals.

Criticisms of the Basic Form of Intervention

Is there some radically different way to structure the relationship between the federal government and the states to make it less regulatory or legalistic and more cooperative? Assuming the federal government maintains various goals, the question is whether these goals can be achieved in a relationship almost completely without the requirements that characterize existing federal interventions. There are at least two possibilities.

The same effect with a reduction of strings only. The deregulation movement asserts that the federal government can achieve its educational goals just as well and at a lower cost by merely reducing the number of legal requirements or strings attached to categorical and block grants. It proposes that states and localities will achieve the federal goals on their own, through non-regulatory mechanisms of political accountability.

This point of view misunderstands the political pressures on states and localities. Without effective strings, these units of government will use federal money for their own purposes, ones that will not necessarily correspond to federal purposes. When effective strings are dropped, categorical aid becomes general aid, and the limited purpose of federal intervention is lost. States and localities may spend federal aid for federally declared purposes without mandatory requirements to do so, but this flies in the face of all available research on the subject. The ineffectiveness of block grants is based simply on this difference in priorities between the state and federal governments. On the other hand, if federal, state and local priorities are similar, then the aid program fails to meet another requirement of the conservative philosophy — that the federal government act only when the states are incapable of doing so.

Assistance vs. compliance orientation. Legal requirements also may be removed if the federal government adopts a position of assistance, rather than one of imposition of rules and regulations. Instead, it articulates broad, more precise goals and the means for achieving them are worked out jointly with local education agencies through discussion and experimentation. The role of the federal government in this mode is to provide financial, technical, organizational and professional assistance.

The problem with this scenario is that it is difficult to envision on a large scale. Many federal programs require states and localities to do what they initially do not want to do. It seems doubtful that the pure assistance type of federal intervention can produce rapid change on a national basis.

Stong political advocacy groups representing the underserved distrust the secrecy and accommodation to majoritarian values characteristic of negotiated arrangements. Conservatives are suspicious of costly programs with a "do good" mandate and no performance standards. Others point to the arbitrariness and excessive discretion this approach gives to decisionmakers. In addition, this type of assistance is not necessarily consistent with the spirit of deregulation, because it often will draw both parties into a long-term, detailed agreement, thereby increasing the absolute level of federal involvement in the details of local administration.

briefly . . .

Consulting editor for this issue of *Policy Notes* is Donald N. Jensen, a research associate at IFG. Jensen works closely with David Kirp, a professor at the Graduate School of Public Policy, University of California at Berkeley, in IFG's research program on law and education. Kirp wrote the introductory article for this issue, "Controls and Consequences".

"Devising Strategies for Change" was contributed by Guy Benveniste, who wrote the original paper for IFG's Law and Education Seminar. Benveniste is a professor in the School of Education at the University of California at Berkeley. Charles Benson, also a professor in the School of Education at the University of California at Berkeley, documents the increase of regulation over time in "Changing Goals Spawn New Rules".

William Clune, Professor of Law at the University of Wisconsin, Madison, wrote "The Ruckus Over Regulation", an evaluation of the current discussions of deregulation. Ann Swidler of Stanford University's Sociology Department contemplates the place of regulation in an individualist society in "Of Sheriffs and Politicians: Reflections on Regulation".

All of the articles presented in this issue of *Policy Notes* were taken from lengthier versions presented at IFG's Law and Education Seminar. The full papers may be obtained on request from IFG for $2 each.

The illustration on the first page is the work of Barbara Mendelsohn of Stanford's News and Publications Office.

Criticisms of the Technique of Intervention

Even if the validity of federal goals is presumed and a fundamental regulatory form accepted, much criticism of regulation concerns the techniques through which it is achieved. The technique most often criticized is legalism, the unpleasant, rigid, formal qualities of legal intervention.

For each of several types of activities in organizations, there is a legalistic mode of regulation, a nonlegalistic mode and many alternative modes in between. The deregulation critique tends to assert that in all regulatory contexts, it is most consistent with underlying policies, and is least costly, to move as far in the direction of nonlegalism as possible. The critique also asserts that almost all federal regulatory programs are unnecessarily legalistic in character.

Probably the most important insight to be gleaned from studying legal intervention in education is that there often is not much room for improvement, not because the intervention is enlightened, but because available alternatives are equally unsatisfactory. The most flexible possibility, unlimited administrative discretion, allows for unpredictability, arbitrariness, and the frustration of protection for underprivileged groups. A system of "waivers" turns out to be administratively laborious and politically unpopular; and it

(continued on back page)

Of Sheriffs and Politicians:

REFLECTIONS ON REGULATION

The complexities of educational governance are cultural as well as practical. They are rooted in deep American dilemmas about the relationship of private claims and public purposes. Examination of those dilemmas can give us a clue to the character of educational regulation in the past few decades.

Americans are, bit by bit, assembling the elements of a centralized welfare state. Prompted by both judicial and legislative action, public responsibility has expanded. Funding arrangements increasingly integrate local, state and federal levels of responsibility, while the courts make the claims of individuals on the public sphere more extensive and more uniform.

However, most Americans do not like centralized planning and administration. Their moral and political discourse rests almost entirely on an ideal of society as made up of autonomous, freely-choosing individuals, each responsible for his or her own welfare. This American ideology conceives of the role of government narrowly, justifying it not because it can provide for the general welfare of society as a whole, but because it can overcome problems of coordination, conflict or corruption arising from the actions of the autonomous individuals of that society. Since the role of government is viewed so narrowly, centralized regulation and controls over education have expanded without being linked to a set of positive educational purposes for government.

These values have important consequences for both policymakers and the general public. Despite expansion of the state and federal role in education, Americans have studiously avoided formulating state or national educational policy. Centralized governance has expanded despite an ideology that enshrines local control and the autonomy of individual consumers of education, whether parents or students.

If education is fundamentally a local responsibility, rational and state intervention in education can only be justified as a defense of individual rights against neglect or malice on the part of local school authorities. This rationale subtly shapes regulatory strategy, leading federal and state administrators to stress compliance over problem-solving and assistance. Federal funding for education, for example, has taken the form of special purpose programs, justified as a response to delimited educational crises. These crises include the failure of schools to teach disadvantaged children, the extra burden on local school districts of educating children of federal employees who do not pay local taxes and national defense preparedness. Federal interventions in education are supposed to ensure the rights of disadvantaged children, handicapped children, and limited-English speaking children.

Federal and state administrators cannot directly implement new educational policy; rather they can only protect rights of specific groups or enforce compliance with special purpose programs against the recalcitrance of bad, law-violating schools and school districts. It is more legitimate to find and punish "bad" school districts which are misusing federal monies or failing to offer equal education to particular groups of children than to create new educational policy. An ideology that enshrines virtuous individuals of the local community as the source of good public policy cannot suggest change or improvement in that policy without implying failure, or even malice, on the part of those individuals. The expansion of centralized controls then almost requires finding "bad people" in order to justify the intervention of public authority. Americans are embarrassed about articulating common purposes, and they prefer sheriffs to either politicians or planners.

By its very nature, the work of those involved in formulating and administering educational policy requires them to think implicitly, and sometimes explicitly, in non-individualist terms about aggregate planning and public purpose. In order to do so, they may turn to such technical, "non-political" ideologies as welfare economics. Or, they may import broader public goals such as economic redistribution under the guise of defending rights. On the whole, they muddle through, hampered in their work by having responsiblity for centralized educational governance without being guided by clearly articulated public purposes. The important question for the future is whether Americans will allow a wider public debate over the purposes that should guide the use of increasingly centralized state and federal power.

There is no necessary incompatibility between individualist thinking and conceptions of collective purpose. Indeed, in American society, a classic assumption has been that the public order exists for the moral fulfillment and personal happiness of individuals. Nonetheless, traditional American public language leaves a vacuum when it confronts problems of policy formation and regulation in an increasingly, if haphazardly, centralized modern state. The tension between American individualism and the modern state's drive toward public regulation is likely to be particularly acute in the arena of educational policy because localism and individualism have been so central in the traditional definition of educational goods. Whether there can be more effective governance of education may depend on the public capacity to develop new cultural and political resources appropriate to a modern regulatory state. ■

exempts organizations which tend to be relatively unburdened by discretionary systems. A system of "certification," exemption of all but the worst cases, may focus enforcement where improved compliance is impossible because the worst cases sometimes lack the capacity to improve.

A Deregulation Sensitive Role for the 1980s

In particular circumstances, deregulation must be selective — it cannot be presumed beneficial in any specific context. Although the opportunities for deregulation are plentiful, they cannot be discovered without careful analysis, and the deregulatory mechanism must be thoughtfully designed. For this reason the hectic, politically scrambled deregulation achieved by the Reagan administration in the summer and fall of 1981 probably did not capture the theoretical benefits of the deregulatory philosophy. Regulatory costs were erratically reduced; but so, almost certainly, was program effectiveness.

Yet, in a prudently devised deregulatory system, there are several promising deregulatory options.

Reordering Federal Priorities. Examining the deregulatory philosophy at the level of goals suggests that emphasis be given to goals which are worthwhile, effective, necessary, and strongly federal in character. Applying these criteria to existing federal education programs suggests this reordering of priorities:

1. For regulatory emphasis: Compensatory education, youth employment programs, English language instruction.

2. For regulatory deemphasis: Vocational education, special education, and student loans for higher education.

The programs to be emphasized address needs on which most states do not place a high priority, or areas in which they lack fiscal and technical capacity, such as language training of immigrant groups. These programs involve basic access to education rather than incremental improvements and they are strongly federal because they are concerned with the absorption of international immigrants, functioning of the national economy, and equality of opportunity.

The distinctive characteristic of the deemphasized programs is their political popularity and their fiscal support among the states, implying that these programs would continue despite federal withdrawal of funds.

The continued vitality of conditional grants. The conditional or categorical grant is an effective compromise of federal and state interests, and a better one has not been suggested. States have the option to withdraw from the relationship, and federal money pays for expenses of the state incurred to comply with federal requirements. There is support for a change of emphasis in some categorical grant programs. It may be time to abandon the "effective strings" programs, which stress fiscal accountability and which may interfere with educational effectiveness.

A Multitude of Contexts. Neither more nor less regulation can be presumed beneficial on the average, and therefore, all efforts should be concentrated on identifying marginal improvements in particular contexts. Research and funding should be directed at deregulation in particular contexts. There are a number of specific possibilities.

Aid might be rendered on the basis of contract instead of regulation. The advantage of this approach is that specific, "tough" goals for change are obtained through consent rather than regulation. Another technique is sharp confinement or isolation of necessary legalisms in such a way that they do not interfere with the educational process. Still another technique is "assistance with compliance", where the federal government offers a variety of resources to aid states in meeting the goals of the program.

Finally, much could be accomplished by close examination of what aspect of particular legalisms are functional and what aspects could be eliminated. Compliance paperwork is probably the classic example of legalism which is justifiable in the abstract but which often may be totally useless in particular contexts.

Despite the exhortations to be careful and precise about the deregulation critique, the clumsiness and imprecision of politics often makes this difficult. A certain amount of undifferentiated social indignation is required to overcome the inertia and lethargy of the regulatory process, but if this spirit is applied full strength to government programs, the result is likely to be wreckage rather than efficiency. ■

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A RASH OF REPORTS

School District Accountability

By Mary Bankston

Recent waves of educational reform have produced a series of federal and state legislated programs for student groups defined as having special educational needs. State and federal funds designated for local school districts have eased the burden of providing education for handicapped or bilingual students, have subsidized school lunch programs and various enrichment activities, and have purchased equipment and technical expertise for classroom use. As the availability of federal and state funds increased, more schools were able to serve their students with these specialized programs.

But accompanying these specialized programs are an array of reporting requirements designed to insure that the program's funds are used appropriately. Depending on the level of district subscription to categorical program funding, such requirements can place a heavy administrative burden on local school districts. Many critics of regulation have suggested that such regulatory demands have served to shift the district's energies away from educating children and instead toward meeting these cumbersome accountability requirements.

The Study

In order to determine the ways local school districts respond to these increasingly complex state and federal requirements, a recent IFG study examined a typical California school district of 30,000 students. The district's heterogeneous student population made it eligible to participate in many federal and state aid programs.

Initially, it was anticipated that all the necessary information could be gathered through interviews with a few key district personnel. However, discussions with 25 district administrators in all revealed that no single individual was able to describe what happened in other district departments. Often, when asked which department prepared a given report, the administrators could only provide their "best guesses". Some of the administrators, particularly those supervising categorical programs, were hard-pressed even to know all of the facets of the programs for which they were directly responsible. The *California State Report Calendar*, which lists and describes all reports required of districts by the U. S. Department of Education and the California State Department of Education, was also consulted.

Although it provided only 8 percent of the districts's income, the U.S. Department of Education required 30 percent of the reports prepared by the district.

Information obtained from interviews and the *California State Report Calendar* revealed that the district was required to prepare 153 reports for federal and state departments of education during FY 1979-1980. One hundred and three of these reports, or 67 percent, were required by categorical programs. Of all the reports prepared, 70 percent were for California Department of Education offices, with the remainder being prepared for the U. S. Department of Education. Not included in this total were the many short forms prepared due to special circumstances or on an "as required" basis. These as required reports included such things as applications for competitively funded special programs, requests for waivers from certain requirements and certification for programs and personnel.

Although it provided only 8 percent of the district's income, or $6 million, the U. S. Department of Education required 30 percent of the reports prepared by the district. In contrast, local government, supplying 23 percent of the district's income, only required copies of certain fiscal reports sent to the state. Other federal agencies also required reports from the district.

Most of the reports prepared for federal and state departments of education tended to be lengthy, with many more than 50 pages long. Some also possessed several long components. For instance, "School Level Plans", identified as one report, was actually a conglomerate of plans for each school participating in a state sponsored School Improvement Program. Each of those separate plans was approximately 50 pages long. Though most reports prepared by the district were statistical in nature, certain plans and evaluations of categorical programs contained long descriptive narratives.

Report writing for the district was not carried out in one office, or even under one roof; rather the task was spread throughout the district. Twenty departments within five district divisions were occupied with writing reports for federal and state agencies. Indeed, this task appeared to be the primary activity of many departments. Each unit prepared and submited reports on an individual basis, and little integration or coordination could be discerned at the district level.

Fiscal and program accountability were two major, separate domains of activity. A coordinated system for fiscal accounting

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to the state had developed, and within the district a separate, very sparse system of fiscal accounting had been devised for general education programs. In contrast, reports documenting compliance with categorical programs were prepared in offices scattered throughout departments in the district. These offices included Special Projects, Special Services, Childrens' Centers, Adult Education, Food Services, Driver Training, Driver Safety and School-Age Parenting. No one at the district was able to describe all of the categorical programs provided by the district, or what reporting was required for participation in them.

Each report prepared by the district for both fiscal and programmatic purposes was routinely passed through the district's business division. However, there is no evidence that there existed any overall organizational framework within that office for coordinating the separate reporting activities. No one within the Business Division or any other office had a clear understanding of the amount of reporting required.

Similarly, programmatic reporting was not integrated into a larger framework of district reporting activity to the state. After much criticism and a major research effort of its own, the California Department of Education devised and implemented two separate "Consolidated Reporting Systems" for some of its categorical programs. This Consolidated Reporting System did in fact merge some program reporting activities, but the resulting reports were longer and did little more than change the manner in which they were delivered to the state. In fact, as soon as these consolidated reports were sent to the state, they were separated by section and sent to staff personnel handling specific programs within the respective unit.

Twenty departments . . . were occupied with writing reports for federal and state agencies. Indeed, this task appeared to be the primary activity of many departments.

The lack of integration and coordination of reporting activities made it impossible to obtain information about the district's overall reporting system from one or two administrators. Indeed, the fact that 25 different administrators had to be interviewed in order to obtain the necessary information for this study clearly indicates the lack of coordination of this district activity.

The complexity of the reporting requirements is readily apparent in Figure 1, which shows the reporting arrangements for categorical program accounting from the school district to the California State Department of Education. Each program contains distinct requirements with much separate reporting to accommodate. The apparent direct reporting in the case of "Special Projects" is misleading because the Centralized Services unit acts merely as a conduit, fanning the individual components of consolidated reports out to the many subunits within the Office of Programs. Fiscal reports for consolidated programs are sent from the Business Services Division of the school district to the state's Local Assistance Bureau of the Financial Services Division and are not integrated with the report requirements for the program's implementation.

It is important to note that this figure maps only the reporting for categorical funding from the district to the state, and does not include reports sent to the U. S. Department of Education or to other state Department of Education agencies. In fact, the school district's reporting arrangements are far more complex than Figure 1 makes them appear.

This lack of coordination does not appear to be a result of any distinctive characteristics of the administration of this school district. Rather, it appears that it stems from the sheer complexity of reporting activity at the district and the fact that reporting requirements are constantly changing.

REQUIRED REPORTS
SCHOOL DISTRICT TO
U.S. DEPARTMENT OF EDUCATION
July 1980 - December 1980

Title

- Development of Competency Measures for Vocational Skill Areas (OE-755)
- Districtwide Advisory Committee Final Report
- Application for Federal Assistance: Career Education Incentive Act (OE-692)
- Application for Migrant Education Program: ESEA, Title I (OE-362)
- Financial Status and Performance Report for Migrant Education Program ESEA, Title I
- Nationwide Study of the Distribution, Utilization, and Impact of Research and Development Products in Vocational Education
- Needs Assessment Survey for Handicapped Populations in Vocational Education
- Teachers' Language Skills Survey, 1980-81
- Indian Student Enrollment Certification: LEA (OE-506)
- Quarterly Program Progress Report: EEOP (OE-361)
- Right to Read Financial Status and Performance Report (OE-361)
- ESEA, Title VII Basic Program Profile (OE-770)
- Evaluation of the Classroom Instruction Component of ESEA, Title VII Bilingual Education Program
- Program Administrative Review System for Handicapped Programs (OE-9066)
- Evaluation of School Health Education Programs
- Handicapped Children Receiving Special Education and Related Services (OE-9058)
- EEOP Instructions for Financial Status Report and Performance Report (OE-116-2-1)
- Financial Status and Performance Report: Part B of Education for All Handicapped Children Act (OE-9039)
- A National Evaluation of School Nutrition Program
  - Survey of Food Program Administrators
  - Survey of Students
  - Household Survey of Parents
  - Longitudinal Survey of Students (FNS-1106)
- Survey of Private Elementary and Secondary Schools
- Career Information Systems in Secondary Schools: A Comparative Assessment of Alternative Types
- Financial Status and Performance Report for Adult Basic Education Programs for Indo-Chinese Refugees (OE-571-1)
- Management Evaluation Review for Quality Adult Education Programs(OE-750-1 through 5)

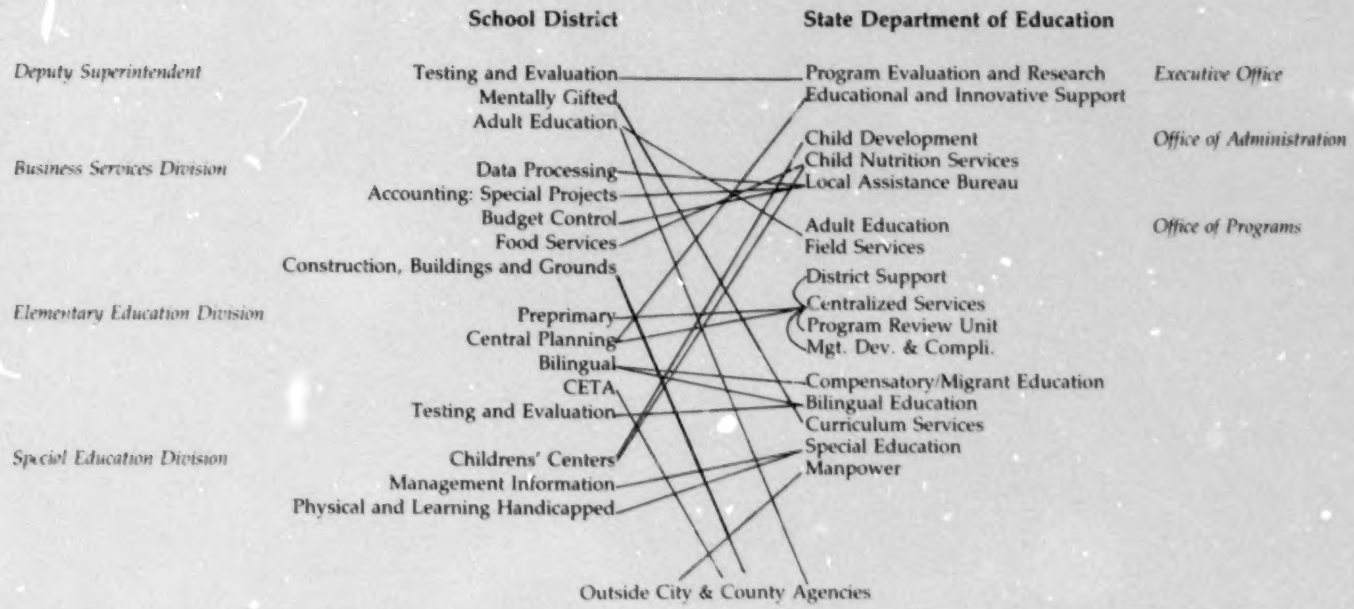
Impact and Implications

The information uncovered in this investigation illustrates that district reporting activity is both extensive and uncoordinated. It appears that the district has had to change its organizational structure in order to meet reporting demands imposed on it by outside sources of authority. The sheer volume of district reporting appears to require additional staffing — in fact, 17 of the 53 central district administrators were retained specifically for and were funded by categorical programs. As a result, the district's administrative and departmental structure has become larger, more differentiated and increasingly complex.

Furthermore, as new programs were implemented and expanded, the school district found it necessary to expand its facilities for administrative operations. This has resulted in a scattered and disjointed physical plant. The Special Projects office is several blocks away from central administration offices; the Special Services office is several miles away in another city altogether. The office of Adult Education is at least a mile away, and the mentally gifted program is administered from the hinterlands. This spatial separation of offices appears to impede communication. It is a further obstacle to coordination of reporting and implementation of program activities.

Figure 1

School District Reporting to California Department of Education for Specially Funded Programs



Increased regulations accompanying state and federal educational programs have demanded certain changes at the school district level. The school district has adapted to meet institutional demands by developing an increasingly complex and differentiated administrative and departmental structure together with a spatially dispersed physical plant. This administrative complexity and differentiation make it increasingly difficult for a district to maintain an overarching framework within which to conduct the overall educational enterprise.

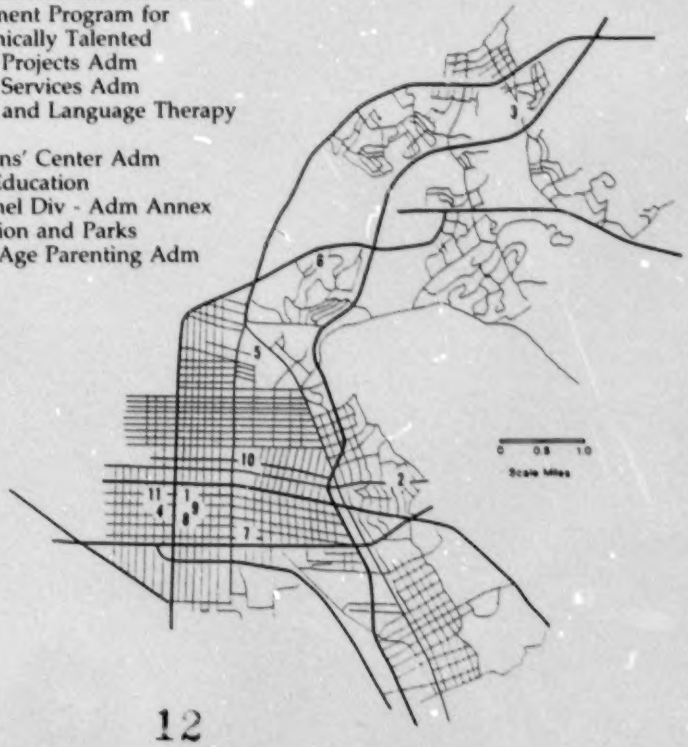
Furthermore, separate, highly specific, and often disparate reporting requirements for some of the programs mean that all district departments are involved in writing reports for federal and state agencies. These reports impose time and energy demands on every district division. The inordinate demands of report preparation shift administrative attention up toward the regulatory agencies rather than down toward instructional activities at the school site.

Recent legislative changes may alter some of the conditions described in this report. The Education Consolidation Improvement Act of 1981 (ECIA) represents a congressional attempt to combine existing federal categorical grants programs in education into a single legislative act.

Figure 2

SAMPLE SCHOOL DISTRICT

1 Central Adm Offices
2 Instructional Materials Center
3 Enrichment Program for Academically Talented
4 Special Projects Adm
5 Special Services Adm
6 Speech and Language Therapy Center
7 Childrens' Center Adm
8 Adult Education
9 Personnel Div - Adm Annex
10 Recreation and Parks
11 School Age Parenting Adm



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Although ECIA sets out the purposes of the aid under its various chapters, it gives the states and local school districts wide discretion in how the funding is actually used. Whether ECIA is merely another fashionable innovation, or whether it will actually reduce the reporting demands on school districts remains to be seen.

As this study illustrates, an inordinate amount of district administrative effort is being directed toward writing reports for higher levels of authority. This further removes the attention of district administrators from the schools they supervise. Advocates of deregulation anticipate that new laws may make it feasible and attractive for districts to reduce the size of their adminstrative units — units which have grown due to burdensome reporting requirements. Given California's record in consolidating its reporting, and given the fact that so many school district administrators are currently supported by categorical program funds, this task might be a most difficult one. The self-perpetuating momentum of the bureaucratic phenomenon is hard to stem — even at the local school district level. ■

JUST SCHOOLS

Achieving racial justice in education once seemed a simple matter: allow black and white children to attend school together. It was an issue of high principle, given meaning by the Supreme Court in its landmark 1954 decision, *Brown v. Board of Education*.

This pursuit has become far more complex in the intervening years. The very idea of racial justice has proved evanescent: as a society, Americans are far less certain about what is right than they once were. Moreover, those uncertainties have emphasized differences of opinion among increasingly antagonistic groups. Their conflicts over such divisive issues as mandatory busing, community control, and metropolitan-wide desegregation have only exacerbated the tension. At the same time, the process of decision has become more confused, entangling politics as well as principle.

Just Schools charts the history of enmity and indecision by looking both at national developments and at the very different experiences of five northern communities during the quarter-century following the *Brown* decision. Kirp, professor of public policy and lecturer in the Boalt School of Law at the University of California at Berkeley, directs the research program on law and education at IFG.

David L. Kirp, JUST SCHOOLS. University of California Press, 2223 Fulton Street, Berkeley, CA 94720, 392 pages, $19.95. ■

Additional copies of this ***Policy Perspective*** *may be obtained by writing to IFG, School of Education, CERAS Building, Stanford University, Stanford, CA 94305-1691.*